

### REMARKS

Claims 1-16, 23-24, and 26-29 remain in this application for the Examiner's review and consideration. Claims 17-22, 25 and 30-33 have been canceled without prejudice in an effort expedite prosecution of the pending application, and applicant reserves the right to pursue these claims in further applications.

The Examiner has objected to claims 1-16 as being dependent upon a rejected base claim, but has indicated that claims 1-16 would be allowable if rewritten in independent form. Claim 1 has been rewritten in independent form, including all of the limitations of claim 22, and clarifies that the second implant has "at least one" substantially flat engagement surface rather than "a" substantially flat engagement surface (with the understanding that under *KCJ Corp. v. Kinetic Concepts, Inc.*, 223 F.3d 1351, (Fed. Cir. 2000), "a" is understood to mean "at least one"). Claim 13 has been amended to depend from claim 1. Accordingly, claims 2-16, which depend from allowable claim 1, are allowable.

Claims 23, 24 and 26-29 have been amended (without prejudice in an effort to expedite prosecution and to pursue in further applications), to depend from claim 1. It is believed that claims 27 and 28 should not have been identified as withdrawn from consideration as they depend from a generic claim as acknowledged by the Examiner in the Office Action mailed 12.23.03. Applicant requests that the Examiner confirm that claims 27 and 28 were inadvertently marked as withdrawn, and remain in this application. No new matter has been added. These claims are therefore believed to be in condition for allowance.

In accordance with the above noted amendments the entire application is believed to be in condition for allowance. Withdrawal of the Examiner's rejections and allowance of all pending claims are respectfully requested. No fee is believed to be due for the claim amendments made in this response. Should any fees be required, however, please charge such fees to Jones Day deposit account No. 50-3013.

Respectfully submitted,

Date: August 9, 2004



Brian M. Rothery

(Reg. No. 35,340)

By: Howard I. Shin

(Reg. No. 47,082)

**JONES DAY**

222 East 41<sup>st</sup> Street

New York, NY 10017

(212) 790-9090